

25005

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-207847

DATE: May 2, 1983

MATTER OF: CRC Systems, Inc.

DIGEST:

1. Protest contending discussions were not meaningful because agency did not specifically convey its concern regarding use of analytic model which agency thought was inappropriate is denied since agency identified its area of concern when it requested explanation of proposed low level of effort which proposal showed was primarily attributable to use of model.
2. Protest that agency's failure to rescore the protester's proposal after best and final offers before rejecting it as unacceptable was improper is denied, since the agency reasonably determined that the proposal was not acceptable, and that determination was not inconsistent with the stated evaluation criteria.

CRC Systems, Inc. protests award of a contract to Arthur Young & Company under solicitation No. AA-82-RFP-T3871 issued by the Department of Commerce. The solicitation called for fixed-priced offers to study the development of an office automation management strategy. According to the RFP, office automation involves the machine-aided creation, communication, storage, retrieval and control of information. The contractor was to "review current organizational structure procedures, staffing, regulatory constraints and equipment assets to determine existing problems," and recommend alternative solutions to them. CRC contends that its proposal, which offered the lowest price and was initially scored highest (combined technical and cost scores) overall was improperly rejected after best and final offers without meaningful discussions having been conducted and without rescoring.

The protest is denied.

025443
121246

The RFP, as amended, stated that the proposals would be evaluated using numerical and narrative scoring techniques in accordance with specified technical criteria and weights. The weights for the technical criteria totaled 75 points and cost was assigned 25 points.

The entire program consists of three sequential tasks. The solicitation requested a firm fixed-priced offer with a cost breakdown for Task 1, which was described in an attachment to the RFP. The solicitation also requested an estimated price without cost breakdowns for the entire effort, but stated that only the prices for Task 1 would be used for cost evaluation purposes, with the estimates for the total effort being used as an aid to evaluate the offerors' understandings of the project. The solicitation stated award would be made to that offeror whose technical proposal was technically acceptable and whose technical/cost relationship was most advantageous to the Government. It further provided that although price would be an award factor, award would not necessarily be made to the offeror with the lowest price, and that award would not necessarily be made to an offeror offering technical capabilities exceeding those needed for successful performance. The RFP stated that the Government's estimate of the level of effort needed for Task 1 was 20 to 30 percent of the 24 man-months estimated for the total program.

CRC's proposal offered a price of \$9,719.60 for Task 1 and an estimated price of \$77,821.76 for the total program. Arthur Young's proposal offered \$24,272.00 for Task 1 and an estimated price of \$140,418.00 for the whole program. Eight of the 28 proposals received, including CRC's and Arthur Young's, were determined to be within the competitive range. CRC's proposal ranked fourth technically (76.8 of 100 points) and first from a price standpoint (30 points) giving it an overall score of 106.8. Arthur Young's proposal was ranked second technically (82.3 points) and third on price (12 points) resulting in an overall score of 94.3.

In the agency's request for best and final offers, CRC was asked to respond to two evaluation comments. The first was that the level of effort proposed for Task 1, 396 man-hours, appeared to be inadequate. (Commerce estimated that 700 to 800 man-hours were necessary.) CRC

therefore was requested to address how its proposed level of effort was sufficient, or to revise it accordingly. The second comment was that the proposed interviews of "several senior level managers" appeared to be inadequate; CRC again was asked to explain how this was sufficient, or to revise the proposal accordingly. CRC's best and final offer expressed confidence in the proposed level of effort, in large part because it had an existing analytic evaluation model for office automation which had been used successfully on similar projects. CRC clarified its plans for interviews by stating it intended to conduct interviews of 45 to 60 minutes each with approximately 15 key agency personnel, which it thought would be fully adequate to meet the agency's needs. CRC's best and final offer also stated that its price of \$9,719.60 for Task 1 remained unchanged from its initial submission.

Although the agency did not rescore after best and final offers, it rejected CRC's proposal and awarded a contract to Arthur Young at a price of \$30,140, the price offered for Task 1 in Arthur Young's best and final offer.

The agency asserts in its report on the protest that it became evident during the negotiation process that CRC's technical proposal was so seriously flawed that it was unacceptable, and that CRC's explanation in its best and final offer made the agency realize that the model CRC proposed to use, which principally accounted for the very low level of effort proposed, was not appropriate for a study of issues with respect to office automation management and policy for a complex organization such as the Department of Commerce. The agency contends that CRC's approach is "overly mechanistic [and] reveals an inadequate appreciation of the major issues of the study, and, together with the low level of effort proposed, shows that CRC does not understand the problems and issues."

CRC contends that if it became evident before best and final offers that CRC's proposal was so seriously flawed that it was unacceptable, the agency should have discussed the perceived deficiencies with CRC during the negotiation process. CRC further contends that the evaluation comments to which CRC was asked to respond were not sufficient to alert CRC about the agency's misgivings as to the appropriateness of the model CRC intended to use and that therefore the discussions were not meaningful. CRC also objects to the failure to rescore the proposals

after receipt of the best and final offers, and states that such a rescoring might have indicated CRC was entitled to award even if its score was lower than Arthur Young's.

Oral or written discussions in a negotiated procurement must be meaningful, and the agency therefore must usually furnish information to all offerors within the competitive range concerning the areas of deficiency in their proposals, so that they can revise their proposals to satisfy the solicitation's requirements. Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458 at p. 36. The content and extent of the discussions required under the circumstances are largely matters for determination by the contracting officer, whose judgment will not be disturbed by our Office unless it is clearly without a reasonable basis. Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61.

We do not understand why Commerce did not appreciate the reason for the low level of effort proposed by CRC-- the analytical model-- when evaluating CRC's initial offer, rather than after best and final offers were submitted. Our review of the initial proposal clearly shows that CRC based the level of effort on the model. Thus, the most appropriate approach in terms of initiating meaningful discussions would have been to identify the weakness of the model itself, rather than just the result of using the model.

Nonetheless, the requirement for meaningful discussions dictates only that the agency, in conducting discussions, proceed in a manner that alerts the offeror to the perceived weaknesses in its proposal. See Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404. Thus, for example, we have held that agency statements made during discussions that lead offerors into particular areas of their proposals are sufficient to put them on notice that their proposals may be deficient in those areas. See Serv-Air, Inc., 57 Comp. Gen. 827, 845 (1978), 78-2 CPD 223. In contrast, an agency may not ignore an aspect of a proposal over which there is significant concern. See, e.g., Checchi and Company, 56 Comp. Gen. 473 (1977), 77-1 CPD 232, in which we concluded that the agency's failure to point out to the protester its serious doubts about the utility of the firm's proposed advisory panel misled the protester into believing the evaluators had no concern regarding the panel.

Although the protester cites Checchi in support of its position here, we do not see how CRC reasonably could have viewed Commerce's comment about the level of effort proposed as other than concern about CRC's overall approach to the contract, which in turn was founded on the analytical model. If Commerce should have known the model was the real reason for concern, the offeror itself certainly should have known. CRC proposed a low level of effort because of its intended use of its model, and we believe concern about the former necessarily relays a similar degree of concern about the latter. We thus believe that the agency met its obligation to conduct meaningful discussions by raising the issue about the sufficiency of the level of effort as an area which needed explanation.

Regarding the failure to rescore the proposals after best and final offers, while a point scoring system may be useful as a guide to decision making, numerical scores do not transform the technical evaluation, which is inherently subjective, into an objective process. The purpose of initial point scores is not to determine the ultimate outcome of the competition, but rather to establish a competitive range of offers to be evaluated further upon submission of best and final offers. The Ohio State University Research Foundation, B-190530, January 11, 1979, 79-1 CPD 15. Moreover, in the final source selection process, the selection official is not bound by the scoring of the technical evaluators, provided his ultimate decision has a reasonable basis and is consistent with the evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325.

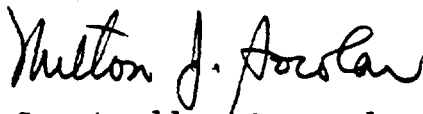
The solicitation here stated that using "numerical and narrative scoring techniques" the proposals would be evaluated in accordance with the stated criteria. The initial proposals were numerically scored, resulting in CRC's proposal being given the highest ranking overall, basically because of its low price and thus higher score for that factor. We have concluded that CRC was adequately advised of the perceived deficiencies in its initial proposal, and the record shows that the firm's response in the best and final offer essentially only stressed its analytical evaluation model approach, and in no way allayed the evaluators' concerns. Although CRC's best and final offer was not rescored, the contracting officer, "aided by technical experts," determined

that the CRC approach would not satisfy the solicitation's requirements and that CRC's proposal was therefore unacceptable. Under these circumstances, we do not see how a rescoring after best and final offers could possibly have altered that judgment, and it is therefore not a matter for objection. See Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD 365.

We recognize that CRC disagrees with the evaluators' conclusion that the firm's approach to meeting Commerce's needs was unacceptable. In reviewing cases where a protester questions a technical evaluation, however, our Office does not independently reevaluate the proposals to determine which competitor should have been selected for award. The determination of the relative technical merits of proposals is the responsibility of the contracting agency, and will not be questioned by our Office unless clearly shown to be unreasonable, arbitrary, or in violation of procurement statutes and regulations. Pacific Consultants, Inc., B-198706, August 18, 1980, 80-2 CPD 129. A firm's mere disagreement with an agency's evaluation of its proposal does not carry the firm's burden to prove that the evaluation was improper under that standard. See Science Information Services, Inc., B-207149.2, November 29, 1982, 82-2 CPD 477.

Finally, CRC suggests that the award of a contract to a higher-priced and technically superior offeror is not justified if an offer scored lower technically, but priced lower, meets the Government's needs. While that may be true in certain situations, here Commerce determined that the lower-priced CRC offer was unacceptable because it would not meet the needs of the agency. Since the offer thus was not eligible for award, its price is irrelevant. See Science Applications, Inc., B-193229, May 23, 1979, 79-1 CPD 369.

The protest is denied.

for 
Comptroller General
of the United States